

Remarks

Applicant and the undersigned would like to thank the Examiner for the Examiner's efforts in the examination of this application.

Election/Restriction

Claims 1-15 have been elected without traverse. Claims 16-102 have been cancelled.

Claim 3

While claim 3 is considered rejected according to the office action summary, the Examiner has not presented any grounds for rejection nor an explanation of the rejection.

Claim Rejections, 35 USC 102

At the time of the Office Action, claims 1-15 were pending. The Examiner rejected claims 1, 2 and 4-10 under 35 U.S.C. 102(b) as being anticipated by Fiddian-Green (US 6,334,064). Claim 2 has been cancelled without prejudice. The Applicant respectfully traverses the rejections.

Independent claim 1 of the present application has been amended to disclose an implantable surgical drain having a contact optimizer when placed against a tissue of a patient's body for draining fluid and sensing at least one physiological property of the tissue comprising: an elongated conduit configured to be implanted in a patient's body to drain fluid from a tissue of the body, the elongated conduit including a first and a second surface on an outer side of the elongated conduit; a first sensing element positioned at the first surface of the elongated conduit configured to sense a physiological property of the tissue; and a first inflatable compartment positioned

between the first and the second surface of said conduit configured to optimize contact between the tissue and the first sensing element associated with the elongated conduit.

Fiddian-Green does not teach the limitations of the present invention; Fiddian-Green does not teach a sensing element positioned at the first surface of the conduit while the inflatable compartment is positioned between the first and the second surfaces of the conduit for contact optimization purposes, as now required by the claim. The sensing elements of the Fiddian-Green's system are surrounded by the membrane body 36 (inflatable compartment) while the membrane is not positioned between any surfaces. Therefore, the membrane of Fiddian-Green cannot be between the first and second surfaces of the conduit while the sensing element is positioned at the first surface. In other words amended claim 1, in contrast to Fiddian-Green, requires the inflatable compartment to be positioned (i.e. behind or beside the sensing element) in order to optimize contact between the tissue and the first sensing element (as illustrated in Figures 13A, B, E and F of the present application). Rather than optimizing contact, Fiddian-Green's membrane plays a critical role in gas/fluid exchange for the purpose of sensing. Fiddian-Green's membrane must be placed around the sensors, otherwise it would not function at all. In contrast, the inflatable compartment of the present application serves as an optimization element of the surgical drain that improves sensor contact for improved sensing of the physiological properties (rather than serving as a fluid exchanging element as in Fiddian-Green).

Thus, claim 1 is allowable for the above reasons. Independent claims 3-10 are allowable for the same reasons.

Claims Rejections, 35 USC 103

The Examiner also rejected claims 11-15 under 35 U.S.C. 103(a). Specifically, the Examiner rejected claims 11, 12 and 15 as being obvious over Fiddian-Green in view of Wittes et al. (US 3,680,562), and rejected claims 13 and 14 as being obvious over Fiddian-Green in view of Torre et al. (US 2002/0055757). The Applicant respectfully traverses the rejections. Neither Wittes et al. nor Torre et al. teach the inflatable compartment positioned between the first and the second outer surfaces of

the conduit and the sensing element positioned at the first surface of the conduit for contact optimization, as in amended claim 1 of the present application. None of the combined prior art cited by the Examiner remedies the deficiencies of Fiddian-Green that were discussed above. Therefore, claims 3, 11-15 are allowable for the same reasons as applicable to claim 1.

CONCLUSION

Applicant respectfully submits that the above amendments place this application in a condition for allowance, which the Applicant respectfully solicits. The Applicant and the undersigned would like to again thank the Examiner for the Examiner's efforts in the examination of this application and for reconsideration of the claims as amended in light of the arguments presented. If the further prosecution of the application can be facilitated through interview between the Examiner and the undersigned, the Examiner is requested to telephone the undersigned at the Examiner's convenience.

Respectfully submitted,
McDERMOTT WILL & EMERY LLP

Marc E. Brown,
Registration No. 28,590

2049 Century Park East
Suite 3400
Los Angeles, California 90067
Date: May __, 2006
Telephone: (310) 277-4110
Facsimile: (310) 277-4730